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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CITY OF NORCO et al.,

Plaintiffs and Appellants,

v.

KEELY MARTIN BOSLER, as Director, etc., et al.,

Defendants and Respondents.

C087829

(Super. Ct. No. 34-2017-
80002653-CU-WM-GDS)

A cooperation agreement between appellant City of Norco (City) and Norco Community Redevelopment Agency (RDA) provided that City employees would work part of the time for the RDA, which would reimburse the City.¹ Upon dissolution of

¹ Appellants include the City as the successor agency to the RDA, Norco General Employees Association, a public employees' union, and Andy Okoro, City Manager. We refer to appellants collectively as "the City." Respondents are Keely Martin Bosler in her official capacity as Director of the Department of Finance, Paul Angulo in his official capacity as the Riverside County Auditor-Controller, and the Oversight Board of the City of Norco as successor agency to the RDA. We refer to respondents collectively as "DOF."

redevelopment agencies in California, the Department of Finance (DOF) for a time allowed the former RDA's tax increment revenues to be used to pay the unfunded pension obligations and post-retirement health costs associated with City employees' work for the RDA. Health and Safety Code section 34175 provides that the intent of the statutes dissolving the redevelopment agencies is that "pledges of revenues associated with enforceable obligations of the former redevelopment agencies are to be honored."² Section 34171, subdivision (d)(1)(C), defines " '[e]nforceable obligation' " to include "legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments"

In 2017, however, DOF denied further payments, determining that the cooperation agreement between the City and the RDA was not an enforceable obligation. Section 34171, subdivision (d)(2), specifies that " 'enforceable obligation' does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency." We have held that "the overriding provision is the one limiting the definition of enforceable obligation." (*County of San Bernardino v. Cohen* (2015) 242 Cal.App.4th 803, 814 (*San Bernardino*).)

The City offers a number of arguments attempting to counter the interplay of section 34171, subdivisions (d)(1)(C) and (d)(2), all of which we reject as meritless. Alternatively, the City falls back on the assertion that dissolution statutes unconstitutionally impair contracts, an argument we have rejected many times, including, as here, because a city failed to show " 'a present, specific and substantial impairment of contract attributable' to the change in the law. [Citation.]" (*City of Petaluma v. Cohen* (2015) 238 Cal.App.4th 1430, 1442 (*Petaluma*).)

² Undesignated statutory references are to the Health and Safety Code.

We affirm the trial court's judgment denying the petition for writ of mandate.

FACTUAL AND PROCEDURAL BACKGROUND

We will not revisit in detail the dissolution of redevelopment agencies in California and the statutes implementing that process covered in our prior decisions. (*City of Grass Valley v. Cohen* (2017) 17 Cal.App.5th 567, 573-574 (*Grass Valley*); *San Bernardino, supra*, 242 Cal.App.4th at pp. 807-809; *City of Tracy v. Cohen* (2016) 3 Cal.App.5th 852, 855-856 (*Tracy*)). “Given the many RDA cases this court has decided, due to the designation of Sacramento County as the venue for such disputes [citations], its basic implementing mechanisms are well understood by the parties.” (*Grass Valley, supra*, 17 Cal.App.5th at p. 573, fn. omitted.)

We confine our discussion to the statutes, facts, and records relevant to this appeal challenging the determination of DOF and the trial court that the City's unfunded pension and post-retirement health costs were not enforceable obligations under the dissolution statutes.

On January 2, 1980, the City passed an ordinance declaring its council to be the RDA.

On March 5, 1980, the RDA adopted bylaws that provided: (1) City officers would be the officers of the RDA; (2) City employees would perform RDA work and be compensated with RDA funds for work in excess of their normal hours and conditions of employment for the City; and (3) city council members would be members of the RDA and fix the compensation of RDA employees.

On March 5, 1980, the City and the RDA entered into a cooperation agreement. The City agreed to provide the RDA with “the services of city officers and employees” The City was to provide periodic statements of the costs incurred for services provided to the RDA, including “a proration of City's administrative and salary expense attributable to services of city officials, employees and departments rendered for

the [RDA].” The RDA agreed to accept the City’s services and repay its costs shown on the statements.

Prior to the formation of the RDA, in 1976, the City entered into an agreement with the Board of Administration of the California Public Employees’ Retirement System (CalPERS), making City employees members of CalPERS. The agreement called for the City and its employees to make contributions to CalPERS as required by the Public Employees’ Retirement Law (PERL). The agreement was amended by the parties periodically from 1981 to 2006. None of the amended agreements included any reference to the RDA or City employees performing services for the RDA.

On November 18, 2010, the City and the Norco General Employees Association (NGEA) entered into a memorandum of understanding (MOU) in which the City recognized NGEA as the representative for City employees. Under the MOU, the City agreed to pay 100 percent of the employer’s and employee’s contributions to CalPERS until November 1, 2010, after which employees would pay 100 percent of their contributions. The City further agreed to participate in the State of California’s health benefit programs available through CalPERS and pay the costs of the programs as specified in the MOU. The City submitted in evidence the version of the MOU in effect from July 1, 2010, to June 30, 2012. This MOU did not include any reference to the RDA or City employees performing services for the RDA. City Manager Okoro declared that previous MOUs had similar terms.

In January 2011 the Governor announced his intention to dissolve the redevelopment agencies. (*Grass Valley, supra*, 17 Cal.App.5th at p. 574 & fn. 2.) In June 2011 the Legislature enacted statutes that provided a process for dissolving redevelopment agencies and determining their “ ‘enforceable obligations.’ ” (*Id.* at p. 574.) The statutes reflected the state’s policy to curtail abuses of the redevelopment law by which the agencies and their “sponsor” entities (usually cities) created the agencies, staffed their boards, and used an increasing share of property taxes for

redevelopment projects. (*Ibid.*) The California Supreme Court upheld the law dissolving the redevelopment agencies, reforming the effective date to February 1, 2012. (*Ibid.*, citing *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 275 (*Matosantos*).)

On January 11, 2012, the City was elected by its council to serve as the successor agency to the RDA. As a successor agency, the City was required to “[c]ontinue to make payments due for enforceable obligations.” (§ 34177, subd. (a).)

To pay an enforceable obligation, a successor agency must apply to DOF for approval by setting forth enforceable obligations on a recognized obligation payment schedule (ROPS). (§§ 34177, subd. (l)(2), 34180, subd. (g); *San Bernardino, supra*, 242 Cal.App.4th at p. 808.) DOF may eliminate any obligation listed on the ROPS, as well as request documentation of claimed enforceable obligations. (§§ 34177, subd. (m), 34179, subd. (h), 34180, subd. (g); *San Bernardino, supra*, 242 Cal.App.4th at p. 808.) A successor agency is entitled to meet and confer with DOF on its decision to eliminate or modify an obligation on a ROPS. (§ 34177, subd. (m).) ROPS items approved by the successor agency’s oversight board and DOF are paid from tax revenue deposited in the redevelopment property tax trust fund (RPTTF) in an amount equal to the former redevelopment agency’s tax increment revenues. (§§ 34182, subd. (c)(1), 34183, subd. (a).)

Beginning on April 4, 2012, the City submitted ROPS to DOF—initially every six months and annually after June 30, 2016—listing “Unfunded Pension Obligation” and “Unfunded Post Retirement Health” amounts payable to CalPERS. These items were further described on the form, respectively, as “Former Agency share of UAAL - Pension” and “Former Agency share of UAAL - Health.”³ Initially, in the column titled

³ UAAL is an acronym for “‘[u]nfunded accrued actuarial liability,’ ” which “is the difference between actuarial accrued liability and the valuation of assets in a fund.”

“Contract/Agreement Execution Date” for these items, the City’s ROPS form stated “Not Applicable” or was left blank. Beginning in 2014, the forms filled in this column with the date “1/1/2014.”⁴

Beginning on April 20, 2012, DOF responded to each of the City’s ROPS with letters requesting reconsideration of certain items and approving items not disallowed. Each letter informed the City that items approved on any ROPS are subject to further review and removal in the future. For example, on May 26, 2012, DOF wrote City Manager Okoro: “Items not questioned during this review are subject to a subsequent review, if they are included on a future ROPS. If an item included on a future ROPS is not an enforceable obligation, [DOF] reserves the right to remove that item from the future ROPS, even if it was not removed from the preceding ROPS.” (*City of Brentwood v. Campbell* (2015) 237 Cal.App.4th 488, 505 (*Brentwood*) [in its previous ROPS determination letters, “[DOF] each time informed [the city] that past approvals would not prevent it from revisiting the validity of including an item on a future ROPS”].)⁵

On April 12, 2017, DOF wrote City Manager Okoro regarding the City’s 2017-2018 ROPS. DOF stated that “Unfunded Pension Obligation and Post-Retirement

(*Bandt v. Board of Retirement* (2006) 136 Cal.App.4th 140, 147, fn. 3.) “ ‘Most retirement systems have [UAAL]. They arise each time new benefits are added and each time an actuarial loss is realized.’ ” (*Id.* at p. 157.) “An unfunded liability such as UAAL will affect the contribution rate of an employer” such as the City, i.e., by requiring an increase in contributions. (*County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 35.)

⁴ The City has not identified a contract executed on this date.

⁵ These advisories refute the City’s contention that DOF’s “ ‘contemporaneous administrative construction’ ” of section 34171, subdivision (d)(1)(C), in approving ROPS supports the City’s interpretation of the statute. Moreover, from the sequence of events, it appears that DOF was not fully aware the City relied on the cooperation agreement to enforce payment of pension and post-retirement benefits to City employees who had worked for the RDA.

Health . . . are not allowed. The [City] did not provide agreements or contracts to support [that] these costs are obligations of the former Redevelopment Agency.” The letter advised that if the City disagreed with DOF’s determination, the City could request a meet and confer process.

The City submitted a meet and confer request, contending that the liabilities of its former RDA were enforceable obligations under section 34171, subdivision (d)(1)(C), e.g., as “pension payments,” a statute that City asserted does not require an agreement to be an enforceable obligation.

On May 17, 2017, DOF wrote City Manager Okoro recapping the meet and confer. The City contended that under the cooperation agreement the RDA was obligated to reimburse the City for the cost of its employees who worked for the RDA. However, section 34171, subdivision (d)(2), provides that agreements between the City and the RDA are not enforceable. The City also contended that section 34171, subdivision (d)(1)(C), does not require an enforceable agreement for pension payments and obligations. DOF concluded to the contrary that “absent a contract or agreement, the [RDA’s] responsibility for payment of these obligations is not legally enforceable.”

On August 2, 2017, the City filed a petition for writ of mandate, alleging that the RDA’s unfunded pension and post-retirement health care costs were enforceable obligations under the dissolution statutes, and, if not, the dissolution statutes violated the constitutional prohibition on impairment of contracts. After briefing by the parties, on April 13, 2018, the trial court issued a tentative ruling denying the petition. That same day the court conducted a hearing with counsel for the parties. The court vacated the tentative, and requested and received supplemental briefing.

On June 7, 2018, the trial court issued a final order denying the City’s petition for writ of mandate. The court determined that the language of section 34171, subdivision (d)(1)(C), did not support the City’s interpretation in several respects and, in any event, was overridden by section 34171, subdivision (d)(2). The court rejected, based on the

plain language of subdivision (d)(2), the City's argument that it was absurd for DOF to eliminate employee costs reimbursed under agreement between a city and a redevelopment agency, since only 10 out of hundreds of redevelopment agencies in the state paid their employees directly. The court also rejected the City's argument that other dissolution statutes indicated the Legislature's intent that the expense of City employees working for the RDA be categorized as enforceable obligations. The court disagreed that City employees' "joint" status as RDA employees constituted an obligation independent of the cooperation agreement. Finally, the court noted that this court had rejected an argument similar to the City's contention that the dissolution statutes constituted an unconstitutional impairment of contractual right to pension benefits, because losing one source of funds for an employer's contributions to a retirement fund does not prevent an employer from making required contributions.

On July 19, 2018, the court entered judgment against the City from which it appeals.

DISCUSSION

Standard of Review

The facts are not in dispute. The question is whether DOF correctly interpreted the statute and the relevant agreements, which is subject to de novo review without according deference to DOF. (*Tracy, supra*, 3 Cal.App.5th at p. 860; but see *Brentwood, supra*, 237 Cal.App.4th at p. 500 [“ ‘ ‘ ‘weak deference’ ” ’ ” is accorded to agency's interpretation of its governing statutes where its expertise gives it superior qualifications to do so]; accord *San Bernardino, supra*, 242 Cal.App.4th at p. 809.) We review the trial court's ruling, not its reasoning. (*Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 519.)

Section 34171, Subdivision (d)

Viewed in a straightforward manner this case begins and ends with section 34171, subdivision (d).⁶ The payments disallowed by DOF were for unfunded pension and post-retirement health care costs. As mentioned, section 34171, subdivision (d)(1)(C), provides that “ ‘[e]nforceable obligation[s]’ ” include “legally enforceable payments required in connection with the agencies’ employees, including, but not limited to, pension payments”

However, DOF did not disapprove pension and post-retirement health care costs as outside the terms of section 34171, subdivision (d)(1)(C). DOF applied section 34171, subdivision (d)(2), which provides that “[f]or purposes of this part [section 34170 et seq.], ‘enforceable obligation’ does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency.”

The only legal basis to compel the RDA to pay the cost of City employees working for the RDA is found in the reimbursement provisions of the cooperation agreement. This is the only agreement to which the RDA is a party and the only agreement in evidence that mentions the RDA or City employees working for the RDA (unlike the CalPERS agreement and the MOU). Under section 34171, subdivision (d)(2), the cooperation agreement is excluded as an “enforceable obligation.” Therefore, the unfunded pension payments and post-retirement health care costs attributable to City employees working for the RDA are not enforceable obligations.

The City, however, contends that section 34171, subdivision (d)(1)(C), trumps section 34171, subdivision (d)(2), under the principle that “when two related statutes conflict, the more specific provision prevails over the more general one.” The City has it

⁶ As in *Grass Valley*, we discuss the issues in a different order than presented by the appellants. (*Grass Valley*, *supra*, 17 Cal.App.5th at p. 576.)

backwards. In *San Bernardino*, we held that the “the overriding provision is the one limiting the definition of enforceable obligation,” otherwise section 34171, subdivision (d)(2), would be “meaningless.” (*San Bernardino, supra*, 242 Cal.App.4th at p. 814.)

Contrary to the City’s contention, the trial court correctly applied *Grass Valley* on this issue. In *Grass Valley*, we held that “[t]he natural way” to harmonize dissolution statutes—such as section 34171, subdivision (d)(1)(C), which defines enforceable obligations, with section 34171, subdivision (d)(2), which excludes city-redevelopment agency contracts from the category of enforceable obligations—“is to view the category of agreements between RDAs and their creators as the more specific category, and therefore generally not ‘enforceable’ whether or not such agreements *also* fall within the broader definition of ‘enforceable’ agreements provided by other parts of the dissolution statutes.” (*Grass Valley, supra*, 17 Cal.App.5th at p. 585.) Thus, as between section 34171, subdivision (d)(1)(c) and subdivision (d)(2), the latter subdivision is the more specific and overriding provision. (*Grass Valley, supra*, 17 Cal.App.5th at p. 585.) Otherwise, subdivision (d)(2) is rendered meaningless and the Legislature’s intent to invalidate sponsor-redevelopment agency agreements would be negated. (*San Bernardino, supra*, 242 Cal.App.4th at p. 814; *Grass Valley, supra*, 17 Cal.App.5th at p. 585.)

The City also cites *County of Sonoma v. Cohen* (2015) 235 Cal.App.4th 42 (*Sonoma*), in which we rejected DOF’s argument that the initial versions of sections 34178 and 34180 allowing successor agencies to “reenter” agreements with former redevelopment agencies by seeking authorization from the successor agency’s oversight board (authorization swiftly withdrawn by amendment) were invalid because of the “overall intent” of the Legislature expressed in section 34171, subdivision (d)(2). While relying on this case as one of two instances where we declined to apply section 34171, subdivision (d)(2)—the other being *Tracy*, which we discuss below—the City fails to acknowledge that it actually makes the argument we rejected in *Sonoma*. The City states

that “[t]he Legislature intended, when enacting [the dissolution statutes], to minimize disruption with former RDA employee costs that otherwise were in place and legally payable by the RDA prior to dissolution.” This is also a statement of “overall intent,” which cannot serve to negate section 34171, subdivision (d)(2), where it applies, as here. *Sonoma* stands for the limited proposition that section 34171, subdivision (d)(2), does not apply where the specific language of a specific statute allows what section 34171, subdivision (d)(2), would prohibit. The City cites no such statute and we will not override section 34171, subdivision (d)(2), in its absence based on a broad assertion of legislative intent. (*Brentwood, supra*, 237 Cal.App.4th at p. 501 [“we are concerned with giving effect to the specific language of a specific statute, not an overarching policy penumbra”], citing *Sonoma, supra*, 235 Cal.App.4th at p. 48.)

Notwithstanding the straightforward application of section 34171, subdivisions (d)(1)(C) and (d)(2) in this case, the City makes a number of strained arguments that we address next.

Conjoined Nature of the City and the RDA

The City argues that the unfunded pension and post-retirement health costs of RDA employees are enforceable obligations under section 34171, subdivision (d)(1)(C), based on comments in case law regarding the “ ‘conjoined’ nature of a sponsor and its former RDA, and corresponding ‘conjoined membership’ of their respective governing bodies.” According to the City, this “conjoined” relationship means that the City’s obligations to its employees under the CalPERS contract, the MOU, and state law apply to the RDA.⁷

⁷ We do not address a related contention improperly inserted in the fact section of the City’s opening brief. The City declares that “[u]nder settled California law, the City and Norco RDA served as ‘joint employers’ and the City and Norco RDA were jointly and severally responsible for payment of their shared employees’ compensation and benefits.” This assertion is supported only by a footnote citing cases. California Rules of

As the City acknowledges, the “conjoined nature” commentary was not favorable to RDAs and their sponsors. In *Matosantos*, the California Supreme Court cited, inter alia, section 34171, subdivision (d)(2), regarding limitations in the dissolution statutes on “obligations owed by redevelopment agencies to their community sponsors,” and observed that “the Legislature could well recognize that because of the conjoined nature of the governing boards of redevelopment agencies and their community sponsors, such obligations were not the product of arm’s-length transactions.” (*Matosantos*, *supra*, 53 Cal.4th at p. 258 & fn. 12; *City of Montclair v. Cohen* (2018) 20 Cal.App.5th 238, 244.)

Here, the City and its former RDA, “because of the conjoined nature of their governing boards,” entered into an agreement that was “not the product of [an] arm’s-length transaction[.]” (*Matosantos*, *supra*, 53 Cal.4th at p. 258, fn. 12) to essentially create a new department of the City while shifting the expense to the RDA. In section 34171, subdivision (d)(2), the Legislature sought to invalidate such relationships by holding the agreements that formalized them excluded from the category of “enforceable obligations.” We reject as contrary to the Legislature’s intent the City’s attempt to utilize a “conjoined” relationship as a basis to create enforceable obligations, when that

Court, rule 8.204 provides that the factual section of an appellant’s opening brief should “[p]rovide a summary of the significant facts limited to matters in the record.” The leading treatise on California appellate practice advises: “Outright argument on the various issues should be reserved for the discussion portion of the brief. Your statement of facts should basically be neutral in tone, giving an *honest and fair* picture of the pertinent facts.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) ¶ 9:140, p. 9-42.) Argument in the statement of facts disregards the “ ‘fundamental rules of appellate review.’ ” (*Ibid.*, quoting *In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531.)

relationship was the impetus of a statute that expressly rejects agreements which were a product of the relationship.⁸

Layoffs or Terminations of City Employee Who Worked for the RDA

The City argues that language added to section 34171, subdivision (d)(1)(C), by Assembly Bill No. 1484 (Assembly Bill 1484) clarified that the Legislature intended this section to include the cost of city employees who worked for a redevelopment agency in the category of enforceable obligations. Assembly Bill 1484 amended section 34171, subdivision (d)(1)(C), to add the following sentence: “Costs incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work directly on behalf of the former redevelopment agency shall be considered enforceable obligations payable from property tax funds.” (Stats. 2012, ch. 26, § 6.)⁹

We do not agree that this sentence clarified that *all* costs, including the pension and post-retirement health costs at issue here, incurred as a result of city employees working for former redevelopment agencies are enforceable obligations. This is not what the language added by Assembly Bill 1484 provides. “ ‘[T]he meaning of a statute is to be sought in the language used by the Legislature.’ [Citation.]” (*City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, 304 (*Emeryville*); see also *City of San Jose v.*

⁸ The City faults the trial court for “not properly utiliz[ing] the extrinsic evidence of (i) the extremely low percentage of RDAs (about 2 %) that had contracts in the RDA’s own name with CalPERS, and (ii) the common practice of having sponsors’ employees, who performed RDA work, covered under the sponsor’s contract with an employee association, or CalPERS, or both.” Despite the claimed prevalence of this arrangement, the City does not cite any evidence or case law indicating that the cost of a city’s employees working for a redevelopment agency under an agreement between the sponsoring entity and the redevelopment agency constituted an enforceable obligation, notwithstanding section 34171, subdivision (d)(2).

⁹ We deferred ruling on DOF’s motion for judicial notice of legislative history of Assembly Bill 1484. We now deny the motion as unnecessary to our disposition of this case. (*Grass Valley, supra*, 17 Cal.App.5th at p. 594, fn. 13.)

Sharma (2016) 5 Cal.App.5th 123, 134 (*San Jose*).) The City’s interpretation renders as surplusage the phrase “to fulfill collective bargaining agreements for layoffs or terminations” of City employees who worked for the RDA. It is a well-established rule of statutory interpretation that “ ‘ “[i]f possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose . . .” [citation]; “a construction making some words surplusage is to be avoided.” ’ ” (*Emeryville, supra*, 233 Cal.App.4th at p. 304; *Grass Valley, supra*, 17 Cal.App.5th at pp. 581-582.) Avoiding surplusage, the statutory language provides that payable costs must be incurred to fulfill an obligation arising out of a term of a collective bargaining agreement regarding layoffs or terminations.

The City does not provide any evidence, or even contend, that its pension and post-retirement health care commitments in the MOU were incurred for “layoffs or terminations” of City employees who worked for the RDA or cite a provision of the MOU so providing. Therefore, the language added to section 34171, subdivision (d)(1)(C), by Assembly Bill 1484 does not apply.¹⁰

Interpretation of the Term “Agencies” in Section 34171, Subdivision (d)(1)(C)

The City claims further support for its position that the Legislature intended to cover the costs of its employees working for the RDA from a single word in section 34171, subdivision (d)(1)(C), which defines enforceable obligations to include “payments required in connection with *agencies’* employees . . .” (Italics added.) To the City, the absence of the words “redevelopment” or “former redevelopment” before “agencies”

¹⁰ The City asserts that two jobs performed by City employees who had worked for the RDA were eliminated as result of its dissolution. But even with respect to these employees, the City does not contend that its pension and health care commitments in the MOU were triggered by layoffs or terminations.

signals the Legislature's intent to include cities and counties as "agencies," whose payments owed to employees are enforceable obligations under the dissolution statutes.

This interpretation is not consistent with the Legislature's intent in creating the category of enforceable obligations. The Legislature stated this intent expressly in section 34175, subdivision (a), that "[i]t is the intent of this part that pledges of revenues associated with enforceable obligations of the *former redevelopment agencies* are to be honored." (Italics added.)

Moreover, to state the obvious, the subject matter of the dissolution statutes is redevelopment agencies. (*Matosantos, supra*, 53 Cal.4th at pp. 250-251; *Brentwood, supra*, 237 Cal.App.4th at p. 494.) Therefore, the dissolution statutes in many places use the single word "agency" without any additional modifier to indicate that the agency referred to is a redevelopment agency. (See, e.g., §§ 34161 ["no agency shall incur new or expanding existing monetary or legal obligations except as provided in this part"], 34162, subd. (a) ["an agency shall be unauthorized and shall not take any action to incur indebtedness"], 34172, subd. (a)(2) ["[a] community in which an agency has been dissolved under this section may not create a new agency"].)

Moreover, we note that when the Legislature wanted to use the term "agency" to refer to a city or county in the dissolution statutes, a definition specified that use. For example, section 34173 regarding successor agencies provides: "As used in this section, 'local agency' means any city, county, city and county, or special district in the county of the former redevelopment agency." (§ 34173, subd. (d)(2).)

To accept the City's invitation to construe the term "agency" or "agencies" to mean any public agency would throw interpretation of the dissolution statutes into a state

of confusion. Unsurprisingly, the City cites no case law interpreting the term “agency” or “agencies” as used in the dissolution statutes in this manner.¹¹

Sections 34179.5 and 34179.6

The City maintains we should “harmonize Section 34171[, subdivision](d)(1)(C) with Sections 34179.5 and 34179.6.” Sections 34179.5 and 34179.6 were added by Assembly Bill 1484. (*Brentwood, supra*, 237 Cal.App.4th at p. 495, citing Stats. 2012, ch. 26, §§ 17, 40.) Under these provisions, successor agencies were required to audit former redevelopment accounts in a “due diligence review” of funds transferred to the sponsoring entity from January 1, 2011, to June 30, 2012, in anticipation of dissolution. (*Brentwood, supra*, 237 Cal.App.4th at p. 495, citing § 34179.5, subds. (a), (c)(2).) Upon DOF’s determination that the funds were not subject to an enforceable obligation, a successor agency was required to transfer the funds in its possession to the county’s auditor-controller for distribution to other local entities and also make a diligent effort to recover funds already transferred to the sponsoring entity. (*Brentwood, supra*, 237 Cal.App.4th at p. 495; *Tracy, supra*, 3 Cal.App.5th at p. 859.) Under section 34179.6, future local tax revenues could be diverted to recover funds wrongly transferred to a sponsoring entity. (*Tracy, supra*, at p. 859.)

Section 34179.5 defines “ ‘[e]nforceable obligation’ ” to include the items listed in section 34171, subdivision (d), and expressly exclude, as in subdivision (d)(2), contracts entered into by a redevelopment agency with the public entity that created it. (§ 34179.5, subd. (b)(2).) However, section 34179.5, subdivision (b)(3), created an exemption in its definition of “ ‘Transferred’ ” to mean “transmission of money to another party that is not

¹¹ In a related argument, the City contends that DOF was wrong in determining that, because the former RDA was not a party, the CalPERS agreement was not an enforceable obligation of the RDA under section 34171, subdivision (d)(1)(C). The City relies on the its interpretation of “agencies” in the statute to make this argument. We reject that interpretation and reject the argument.

in payment for goods or services” (*Brentwood, supra*, 237 Cal.App.4th at p. 502 [“section 34179.5 exempts only a transfer of money in exchange for a type of good or service from its ambit”].) In *Brentwood*, we said that payments to reimburse a city solely for its payments to third parties for goods and services did not come within the exemption. (*Brentwood, supra*, 237 Cal.App.4th at pp. 502-503; *Tracy, supra*, 3 Cal.App.5th at p. 863.) In *Tracy*, on the other hand, we held that a city “was entitled to be paid for redevelopment work that its *own* staff directly provided; this was not the case in *Brentwood*” (*Tracy, supra*, at p. 863.)

The City’s argument ignores that section 34179.5, subdivision (b)(2), expressly provides that an enforceable obligation does not include contracts between a redevelopment agency and its sponsoring city, reinforcing the Legislature’s intent to invalidate these agreements. To the extent the definition of “Transferred” in section 34179.5, subdivision (b)(3), is an exemption to that limitation, it is applicable only to the audit and recovery process contemplated by sections 34179.5 and 34179.6. As the trial court noted, the definition of terms in section 34179.5, subdivision (b), states that it is “[f]or purposes of this section” only. Further, as in *Sonoma, supra*, 235 Cal.App.4th 42 this is another instance where a specific statute permits what section 34171, subdivision (d)(2), would prohibit, which is inapplicable outside of its specific context.

Section 34190

The City devotes a two-sentence paragraph to the contention that “DOF’s interpretation of Sections 34171[, subdivision](d)(1)(C) and 34171[, subdivision](d)(2) runs counter” to section 34190, subdivision (a), “by shifting the obligation to pay RDA retirement costs onto city and county sponsors.” Section 34190, subdivision (a), states: “It is the intent of the Legislature to stabilize the labor and employment relations of redevelopment agencies and successor agencies in furtherance of and connection with their responsibilities under the act adding this part.”

The substance of section 34190 concerns preservation of the collective bargaining rights and agreements of employees of former redevelopment agencies by transferring these obligations to successor agencies. (§ 34190, subds. (e)-(g).) In this instance, City employees who worked for the RDA are protected by the City's agreement with CalPERS and the MOU. The City's complaint is in actuality that it must shoulder more of the burden of its employees' benefits, an interest section 34190 was not enacted to vindicate. Indeed, it is the City's effort to avoid its obligations under the CalPERS agreement and the MOU that runs counter to the intent of section 34190.¹²

Impairment of Contract

Lastly, the City contends that, if section 34171, subdivision (d)(2), is interpreted to override section 34171, subdivision (d)(1)(C), the dissolution statutes unconstitutionally impair the contract rights of City employees who worked for the RDA. The City urges us not to interpret section 34171, subdivision (d)(2), in this manner to avoid a conflict with the Constitution. Since we find no unconstitutional impairment, there is no conflict to avoid.¹³

¹² The City contends that its interpretation of section 34171, subdivision (d)(1)(C), to allow RPTTF funding of the pension and post-retirement health care costs of City employees working for the RDA is supported by “extrinsic evidence” showing “the Legislature was very much aware of the precarious payment abilities of cities and counties for unfunded retirement obligations.” This evidence was presented to the trial court by a request for judicial notice. The court denied the request as irrelevant to interpretation of the dissolution statutes. The City did not file a motion requesting judicial notice of this material, which we would have also denied had it been made. (*Grass Valley*, *supra*, 17 Cal.App.5th at p. 594, fn. 13.)

¹³ The City analyzes this issue without discussion of the many decisions of this court rejecting impairment of contract claims regarding the dissolution statutes. (See, e.g., *Brentwood*, *supra*, 237 Cal.App.4th at pp. 503-504; *Petaluma*, *supra*, 238 Cal.App.4th at p. 1442; *Grass Valley*, *supra*, 17 Cal.App.5th at pp. 591-593; *City of Galt v. Cohen* (2017) 12 Cal.App.5th 367, 378-379; *Cuenca v. Cohen* (2017) 8 Cal.App.5th 200, 228-

“Both the United States and California Constitutions contain provisions that prohibit the enactment of laws effecting a ‘substantial impairment’ of contracts, including contracts of employment. [Citations.]” (*Cal Fire Local 2881 v. California Public Employees’ Retirement System* (2019) 6 Cal.5th 965, 977, fn. omitted (*Cal Fire*); U.S. Const., art. 1, § 10, cl.1; Cal. Const., art. 1, § 9.) “ ‘A public employee’s pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity.’ [Citation.]” (*Cal Fire, supra*, 6 Cal.5th at p. 983.) “To support a claim that a public employee’s pension rights have been impaired, the proponent of that claim must present ‘a factual record disclosing . . . present, specific and substantial impairment of [the] contract’ [Citation.]” (*San Jose, supra*, 5 Cal.App.5th at p. 139; *Petaluma, supra*, 238 Cal.App.4th at p. 1442.)

As in *San Jose*, the City supports its contract impairment claim by citing “cases in which the government canceled or reduced the actual payment for the pension benefit.” (*San Jose, supra*, 5 Cal.App.5th at p. 140, citing *Valdes v. Cory* (1983) 139 Cal.App.3d 773, 787; *Cal. Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 508-512; *Teachers’ Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1034-1039.) In *San Jose*, we held that these cases were inapposite because the statute in question “does not prevent the County from paying the required amount to CalPERS for the County employees’ benefits. The County does not claim that it has failed to make the required payments to CalPERS [because of the statute]. Therefore, there is no actual impairment of the rights of County employees to their pension benefits” (*San Jose, supra*, 5 Cal.App.5th at p. 140.)

230; *San Jose, supra*, 5 Cal.App.5th at pp. 139-141; *California Redevelopment Assn. v. Matosantos* (2013) 212 Cal.App.4th 1457, 1492-1494 (*Matosantos II*).)

The City argues, however, “[t]hat no default has yet occurred in the payment of benefits is irrelevant.” To the contrary, without the required showing that section 34171, subdivision (d)(2), has led to CalPERS payments not being made, the City cannot maintain a claim for “ ‘substantial impairment’ ” of contracts. (*San Jose, supra*, 5 Cal.App.5th at p. 139.) Indeed, the City has made no showing that a substantial contract impairment will occur, making the City’s claim at least premature. (*Matosantos II, supra*, 212 Cal.App.4th at p. 1494.)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/s/
RAYE, P. J.

We concur:

/s/
HULL, J.

/s/
MAURO, J.